

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the request of Blue Granite Water Company (“Blue Granite” or “BGWS”) for approval of a bond under South Carolina Code Section 58-5-240(D) (2015) as surety for the rates Blue Granite intends to implement beginning September 1, 2020 while its appeal of Commission’s Order No. 2020-641 to the appellate courts is pending. Thereafter, the Commission also received the Motion for Clarification filed by the S.C. Department of Consumer Affairs (“Consumer Affairs”) and Blue Granite’s request for expedited review of the Company’s Conditional Petition for an Accounting Order, and the continuation of the Stay of an increase in rates under bond originally issued in Order No. 2020-549.

Under South Carolina law, Blue Granite may, notwithstanding this Commission's Order rejecting its petition to adjust and increase Company rates, implement the proposed rate increases requested in its filed rate petition during the pendency of its appeal, provided Blue Granite posts a sufficient bond in accordance with S.C. Code Ann. § 58-5-240(D). Pursuant to this subsection, if the Commission's Order denying Blue Granite's proposed rate relief is upheld on appeal, Blue Granite is required to refund the additional funds collected from its customers during the pendency of appeal with interest accrued at the rate of twelve percent per annum. For the reasons set forth herein, the Commission having determined that the surety company selected by Blue Granite and the proposed amount of the bond is in accordance with the requirements of the applicable statute, the Commission is required to approve the bond.¹ However, subsequent to the issuance of the Directive approving the bond but prior to the issuance of an Order, the South Carolina Department of Consumer Affairs filed a Motion for Clarification. The Commission issued Order No. 2020-549, which stayed the placement by the Company of rates into effect under bond and the Commission proceeded to schedule oral argument for August 27, 2020. Subsequently, Blue Granite filed a Conditional Motion for Approval of Accounting Order, and requested expedited review of that Conditional Petition.

¹ Pursuant to SC Code Ann § 58-5-240(D), Blue Granite Water Company filed a motion for approval of a bond as surety for rates the utility intends to implement beginning September 1, 2020, while appealing the Commission's rate case decision in this docket. Blue Granite seeks approval of a bond in the amount of \$3,874,516, which represents the difference in the revenue requirement authorized by the Commission and the rates the utility wants to charge over an eighteen (18) month estimated appellate period plus interest. Blue Granite will secure this bond from surety, Liberty Mutual Insurance Company. Blue Granite estimates that its appeal to the South Carolina Supreme Court will take approximately an eighteen (18) month period before the Company, rate payers, and Commission will know if the Supreme Court upholds its decision setting the utility rates for water and sewer services charged by Blue Granite.

II. PROCEDURAL HISTORY

On June 8, 2020, Blue Granite moved for approval of bond.

On July 15, 2020, the Commission approved the Company's request for bond in the amount of \$3,874,516 by Commission Directive by finding the amount of the bond to be reasonable and that Liberty Mutual was an acceptable surety.

On August 7, 2020, Consumer Affairs moved for Clarification of the Commission's ruling.

On August 18, 2020, the Commission issued Order No. 2020-549, which stayed the placement by the Company of rates into effect under bond.

On August 24, 2020, Blue Granite filed its Conditional Motion for Approval of Accounting Order, and a request for Expedited Review.

Due to public health concerns, the COVID-19 pandemic, and the need to consider the Consumer Affairs Motion for Clarification, the Commission conducted oral arguments in this matter virtually on August 27, 2020, beginning at 10:00 a.m.

The South Carolina Department of Consumer Affairs ("Consumer Affairs") was represented by Carri Grube Lybarker, Esquire, and Roger P. Hall, Esquire. Attorney Hall appeared and argued on behalf of Consumer Affairs.

Intervenor Town of Irmo, represented by S. Jahue Moore, Esquire, appeared and participated in the oral arguments.

Blue Granite was represented by Frank R. Ellerbe, III, Esquire, and Samuel J. Wellborn, Esquire.

Office of Regulatory Staff (ORS) was represented by Andrew M. Bateman, Esquire and Christopher M. Huber, Esquire, and Alexander W. Knowles, Esquire. Attorney Bateman appeared at the oral arguments for ORS but did not make an argument.

Both Intervenor York County, South Carolina, which was represented by Michael Kendree, Esquire, and Intervenor James S. Knowlton representing himself pro se, also appeared at the oral arguments.

The other intervenor, the Building Industry Association of South Carolina, represented by John J. Pringle, Esquire, was notified of the oral arguments, but did not participate or otherwise appear.

III. TERMS AND CONDITIONS OF THE PROPOSED BOND

Blue Granite requested that the Commission approve a bond pursuant to South Carolina Code Section 58-5-240(D) in the amount of \$3,874,516, pending issuance of the order on the Petition for Rehearing or Reconsideration and any subsequent appeal. S.C. Code Ann. §58-5-240(D) (2015). The Company furnished a proposed bond form to be executed by a surety company authorized to do business in South Carolina. Blue Granite further asserts that it has the right to collect rates under bond under the statute, but at the same time Blue Granite claims that it poses no risk of harm to customers. Blue Granite further argues that any rates collected during the eighteen (18)-months appeals period will be subject to refund protected by the bond with twelve percent interest in the event Blue Granite's subsequent appeal to the South Carolina Supreme Court is unsuccessful.

The Commission found on rehearing that Blue Granite was authorized to implement an annual revenue requirement in the amount of \$29,191,874. Blue Granite intends to

charge rate payers an additional \$2,179,211 under bond so that it will implement a revenue requirement of \$31,371,085, which is greater than approved by the Commission² but less than originally sought in Blue Granite's Application.³ With its Motion for Approval of Bond, Blue Granite provided Exhibit No. 1 setting forth its Schedule of Rate Charges for Water and for Sewer services to be charged to all customers within its service territories.

IV. THE APPLICABLE STATUTE

Pursuant to SC Code Ann § 58-5-240(D), Blue Granite Water Company filed a motion for approval of a bond as surety for rates the utility intends to implement beginning September 1, 2020, while the appeal of the Commission's decision in this docket is pending. Subsection (D) of S.C. Code Ann. Section 58-5-240 states that:

the utility shall appeal from the [Commission] order, by filing with the Commission a petition for rehearing, the ***utility may put the rates requested in its schedule into effect under bond only during the appeal and until final disposition of the case.*** Such bond must be in a reasonable amount approved by the Commission, with sureties approved by the Commission, conditioned upon the refund, in a manner to be prescribed by order of the Commission, to the persons, corporations, or municipalities, respectively, entitled to the amount of the excess, if the rate or rates put into effect are finally determined to be excessive; ***or there may be substituted for the bond other arrangements satisfactory to the Commission for the protection of parties interested.*** During any period in which a utility shall charge increased rates under bond, it shall provide records or other evidence of payments made by its subscribers or patrons under the rate or rates which the utility has put into operation in excess of the rate or rates in effect immediately prior to the filing of the schedule.

² With the Commission approved ROE of 7.46%, the Commission in its Order No. 2020-641 adopted a resulting total Revenue Requirement for Blue Granite of \$29,191,874, which is an increase of \$5,416,736.

³ Blue Granite's Application requested a revenue increase of \$11,589,537 resulting in a total Revenue Requirement of \$35,188,858, an approximately 49.18% rate increase over pro-forma rate revenues of Blue Granite. See, Exhibit B of Blue Granite's Application; Blue Granite Witness Denton Direct Testimony p. 21; Tr. p. 354.21.

All increases in rates put into effect under the provisions of this section which are not approved and for which a refund is required shall bear interest at a rate of twelve percent per annum.

The interest shall commence on the date the disallowed increase is paid and continue until the date the refund is made.

In all cases in which a refund is due, the Commission shall order a total refund of the difference between the amount collected under bond and the amount finally approved.

S. C. Code Ann. §58-5-240(D) (2015) (emphasis added). Thus, if the Commission rejects a utility's application for rate relief, the utility may nevertheless choose to implement its requested rates while the utility seeks appeal of the Commission's denial of rate relief, so long as the utility provides an appropriate surety bond in an amount sufficient to ensure repayment of any overcollection, unless the Commission invokes the bond substitution language in the statute.

V. DISCUSSION

It is the utility's decision whether or not to seek approval of bond from the Commission when making its appeal. Only with a bond approved by the Commission or with some other arrangement satisfactory to the Commission for the protection of parties interested can the utility put rates into effect during the appeal of the rate case and until such time as there is final disposition of the case determining whether or not the rate or rates implemented by the Company are finally determined to be excessive. Section 58-5-240(D) requires that the bond be in a reasonable amount approved by the Commission and issued by sureties approved by the Commission. Blue Granite sought approval of a bond in the amount of \$3,874,516, which represents the difference in the revenue requirement authorized by the Commission in its Order and the rates the utility seeks to charge while

the utility appeals the rate determination to the South Carolina Supreme Court over an estimated eighteen (18) month period plus interest. *S.C. Code Ann. §§14-8-200(b), 58-5-340 (2015)*. Blue Granite also sought approval of Liberty Mutual Insurance Company, which is a company authorized to transact business in South Carolina, as a surety. Blue Granite asserts that both the proposed bond amount and the proposed surety company meet the requirements of the statute allowing the Commission to approve Blue Granite's request for implementing rates to achieve a revenue requirement of \$31,371,085 rather than the approved rate revenue requirement of \$29,191,874. In this case, the Commission approved the bond which is one option available to the Commission, but prior to the issuance of the Order, we were presented with another option from Blue Granite seeking an Approval of an Accounting Order. Thus, this Commission continued the Stay placed into effect by Commission Order No. 2020-549 until December 31, 2020 related to a bond, as discussed below concerning the additional filings of Blue Granite offering the alternative option of an accounting order and that of Consumer Affairs seeking alternatives to the proposed rate implementation.

The statute⁴ does provide a utility the option of seeking a bond or other arrangements satisfactory to the Commission for the protection of interested parties. *S.C. Code Ann. §58-5-240(D) (2015)* ("Such bond must be in a reasonable amount approved by the Commission, with sureties approved by the Commission, . . . *or there may be substituted for the bond other arrangements satisfactory to the Commission for the protection of parties interested*"). It is difficult due to COVID-19 and the related state of

⁴ S.C. Code Ann. §58-5-240(D) (2015).

emergencies to know when or how long the appeals process may take and changes may be necessary. Based on the information presented to us, the proposed surety and the bond in the amount of \$3,874,516 are appropriate. We hold in abeyance until the conclusion of the appellate proceedings when refunds may become necessary to rule on the proper refund methodology at that time, if appropriate.

After due consideration of the oral arguments of the parties on August 27, 2020, pursuant to the Consumer Affairs Motion for Clarification, and Blue Granite's filing of the Conditional Petition for Accounting Order, this Commission believes that it must also examine the language in the statute that points to substituting for the bond "other arrangements satisfactory to the Commission for the protection of parties interested," at least for a limited period. Under this scenario, the placement of rates into effect under bond is being stayed until December 31, 2020 as explained below.

With the consent of the parties, the Commission took judicial notice of the Governor's Order Declaring a State of Emergency, dated August 25, 2020, and the Order on Statewide Evictions and Foreclosures of April 30, 2020 issued by South Carolina Supreme Court Justice Donald W. Beatty, which pointed us to various issues that ratepayers of South Carolina, including the ratepayers of Blue Granite were experiencing due to the COVID-19 pandemic. This Commission already issued Order No. 2020-549, which stayed the proposed increase in rates under bond. After due consideration of the documents of which we took judicial notice, and the oral arguments of the parties, we hold that the Stay imposed by Order No. 2020-549 should continue. Implementation of the Company's rate increase under bond shall be stayed through December 31, 2020, due to

the immediate adverse financial impacts that would be suffered by residential and commercial ratepayers during the Governor's declared health care emergency in South Carolina.

Prior to the oral arguments in this matter, Blue Granite filed a Conditional Petition for Approval of an Accounting Order and also requested expedited review. We granted expedited review, due to this Commission's belief that the Conditional Petition constitutes a substitution for the bond of "other arrangements satisfactory to the Commission for the protection of parties interested." Other than having the imposition of rates under bond being stayed, the bond itself is not affected. However, according to Blue Granite, the Accounting Order will enable the Company to have continued access to necessary capital during these "uncertain and rapidly changing economic times," and the granting of an Accounting Order will not change the Company's present rates, but will also not preclude the Commission or parties from addressing the recovery of these costs in a future rate proceeding.

Approval of the Conditional Petition for Approval of Accounting Order would allow Blue Granite to establish a regulatory asset and defer certain costs associated with the delayed implementation of new rate under bond. These costs include 1) the difference between the rates approved by the Commission through Order No. 2020-306, as amended by the Commission's decision on reconsideration, and the rates it had planned to implement under bond, at a rate of \$5,970 per day; 2) the cost of providing additional notice to customers, and 3) carrying costs on these amounts until recovered from customers. This request for an accounting order does not involve a change to any of the Company's rates

at this time or require any change in any Commission rule, regulation, or policy. Further, the issuance of the accounting order will not prejudice the right of any party to address the recovery of these costs in a subsequent rate proceeding. According to Blue Granite, an accounting order will enable the Company to have continued access to necessary capital during these “uncertain and rapidly changing times.”

With all of these matters in mind, we hold that the Conditional Petition for Approval of the Accounting Order should be approved until December 31, 2020. The parties will have further opportunity to be heard on the Company’s Conditional Petition for Approval of Accounting Order before this Commission’s preliminary Stay has expired. The Commission will consider renewal of the Accounting Order at a later date.

We further hold that the offer of an Accounting Order by Blue Granite is appropriate and a sufficient available option under the S.C. Code Ann. §58-5-240(D) (2015) to protect the interests of the parties. This Commission believes that the plan described above is the best way to protect the interests of all parties in this case in this era of the COVID-19 pandemic. The ratepayers are protected from the increase in rates under bond until December 31, 2020, while Blue Granite has an accounting order, which allows it to book costs into a regulatory asset for consideration of recovery as determined in a future rate case.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, upon consideration of the request of Blue Granite for approval of a bond under S.C. Code Ann. Section 58-5-240(D) (2015), and also consideration of its Conditional Petition for Approval of an Accounting Order and the continuation of a Stay

in placing rates into bond in effect, the Commission makes the following findings of fact and conclusions of law:

1. S.C. Code Ann. Section 58-5-240(D) (2015) gives the utility appealing an order of the Commission in a rate case the option to proceed to place the requested rates in its Application into effect so that ratepayers are paying the utility's requested rate provided the Company posts a bond in a reasonable amount approved by the Commission to provide refunds to ratepayers with interest if the appellate court agrees with the Commission's decision setting the utility's rates.

2. S.C. Code Ann. Section 58-5-240(D) (2015) not only allows a utility the option of seeking a bond but also allows for other arrangements satisfactory to the Commission for the protection of interested parties.

3. The Commission finds that the bond amount of \$3,874,516 proposed by Blue Granite is a reasonable amount for the bond, as this amount will allow Blue Granite to place into effect the rates which would have been in effect had the Commission approved the rates requested by the Office of Regulatory Staff ("ORS") for Blue Granite over an eighteen (18)-month period; thus, meaning that the bond amount proposed by Blue Granite meets the requirements of S.C. Code Ann. Section 58-5-240(D) (2015).

4. The Commission finds that the proposed bond form and proposed surety to be reasonable and further finds that it is sufficient for use by Blue Granite as it provides for refunds of amounts collected in excess in the amounts finally approved on appeal as required by S.C. Code Ann. Section 58-5-240(D) (2015).

5. The bond is approved, but the Stay of placing rates into effect under bond established under Order No. 2020 shall continue until December 31, 2020.

6. The Commission finds that Blue Granite's petition and offer of an Accounting Order by Blue Granite is appropriate and a sufficient available option under the S.C. Code Ann. §58-5-240(D) (2015) to protect the interests of the parties.

7. The Commission finds that the Stay of placement of rates into effect under the approved bond issued in Order No. 2020-549 shall remain in effect until December 31, 2020, due to the immediate adverse financial impacts that would be suffered by residential and commercial ratepayers during the Governor's declared health care emergency in South Carolina.

8. The Commission finds that the requested expedited review of the Conditional Petition for Approval of an Accounting Order should be granted.

9. The Commission finds that the Conditional Petition for Approval of an Accounting Order should be granted until December 31, 2020, and that the Commission will consider renewal of the Accounting Order at a later date.

10. The Commission finds that the parties to this case will have further opportunity to be heard before the Commission's preliminary Stay has expired.

11. The Commission finds that this Order fully addresses the Consumer Affairs Motion for Clarification.

VII. ORDERING CLAUSE

IT IS THEREFORE ORDERED THAT:

1. In the matter of Blue Granite's rate case as contained in Commission Docket No. 2019-290-WS, Blue Granite will be permitted to place rates into effect under bond as provided by S.C. Code Ann. §58-5-240(D) at the expiration of any Stay ordered by this Commission in the amount of \$3,874,516, which is deemed a reasonable bond amount at this time and until circumstances change requiring further action by the Commission concerning the bond.
2. The proposed bond form submitted by Blue Granite is an appropriate bond form for Blue Granite to use in this matter as required by S.C. Code Ann. Section 58-5-240(D) (2015), once the Stay is lifted.
3. The Stay of the Company's ability to place rates in effect under bond promulgated in Order No. 2020-454 is continued until December 31, 2020.
4. Expedited Review of the Company's Conditional Petition for Accounting Order is granted,
5. The Conditional Petition for Accounting Order is granted through December 31, 2020.
6. At the expiration of the Stay, should Blue Granite place rates into effect under bond under the terms of this Order, Blue Granite shall maintain records or other evidence of payments made by its customers or rate payers of the rates in effect under bond in accordance with the requirements of S.C. Code Ann. Section 58-5-240(D) (2015).

7. With further regard to the imposition of rates under bond at the expiration of the Stay, the Commission shall hold in abeyance a decision on how future refunds, if necessary, shall be made.

8. The Commission reserves the right to further amend or alter this Order as necessary or until circumstances may change requiring further action by the Commission concerning the bond or matters herein.

9. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Florence P. Belser

Vice Chair, Public Service Commission of South Carolina

